

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**ECONOMY STONE MIDSTREAM
FUEL, LLC, et al.**

PLAINTIFFS

V.

CIVIL ACTION NO. 4:08-CV-127-SA-DAS

M/V A.M. THOMPSON, et al.

DEFENDANTS

ORDER

On January 8, 2009, the clerk entered defaults against Eagle Marine Towing Inc. (Eagle Marine), Alan Fein, and James Coleman [77, 78, 79]. Subsequently, Ergon Marine & Industrial Supply, Inc. (Ergon) filed its Motion for a Default Judgment [110].

Almost five months after Ergon filed its Motion for Default Judgment, Defendant Coleman filed a Motion to Contest Ergon's Request for a Default Judgment and to Request Dismissal of Coleman from this action [132]. In response, Ergon has briefed the motion as if it were either a response to Ergon's Motion for Default Judgment or a Motion for Summary Judgment [133].

Coleman's Motion to Contest could also be construed as a motion to set aside the clerk's entry of default. See United States v. One Parcel of Real Property, 763 F.2d 181, 183 (5th Cir. 1985) (appellate court agreed with trial court's construal of "motion for leave to file a sworn claim" as a motion to set aside an entry of default); Brown v. Drug & Alcohol Program, 2009 U.S. Dist. LEXIS 64763, *1 n. 1 (S.D. Miss. July 8, 2009) (district court construed a motion to dismiss as a motion to set aside an entry of default).

Therefore, the Court orders the parties to brief Defendant Coleman's motion as if it were a motion to set aside the clerk's entry of default pursuant to Rule 55. The parties shall file their briefs within twenty (20) days of the entry of this Order - by Monday, November 2, 2009. Failure to file

a brief may be interpreted by the Court as a concession of the issue.

So ordered on this the 13th day of October, 2009.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE